

Interim Guidelines for the Protection of Personal Identifying Data
in Publicly Accessible Court Documents¹

(June 2008 draft approved by Subcommittee on Personal Identifying Data)

(a) Purpose and Scope. These guidelines are intended and should be construed to prevent the unnecessary inclusion of certain personal identifying data elements in publicly-accessible documents filed with or issued by the courts, in order to minimize the opportunity to use such documents for identity theft or other improper purposes. As used in these guidelines, personal identifying data elements are those listed in subsections (b)(1)-(b)(3). The guidelines are interim in nature and carry no sanctions for violations. They are intended to focus the attention of litigants and courts on (1) minimizing the inclusion of such data, beginning on the effective date of these guidelines; and (2) considering the necessity, desirability, and feasibility of revising current practices, court rules, standing orders, and court-issued forms, so as to facilitate adoption of a binding rule governing this issue. The guidelines apply to civil and criminal cases in all departments of the Trial Court, in the Appeals Court, and in the Supreme Judicial Court. They apply to documents filed or issued on or after their effective date, both in pending and new cases. They do not apply to documents that are not publicly accessible, pursuant to law, court rule, standing order, or impoundment or similar order issued in a particular proceeding.

(b) Redaction or Omission of Personal Identifying Data from Filings. Except as provided in these guidelines, a document filed with a court should not include a complete version of any of the following personal identifying data elements. Instead, the filer² should redact information from any pre-existing document, or omit information from any document prepared for filing, so that the document includes:

- (1) in the case of a social security number, taxpayer identification number, credit card or other financial account number, driver's license number, or passport number, only the last four digits;
- (2) in the case of a birth date, only the year of birth, rather than the exact day or month; and
- (3) in the case of a name identified as the mother's maiden name of a person, only the first initial of that name.

The filer may mark any redaction with a notation indicating that it was made by the filer on a particular date or made pursuant to these guidelines.³ If any document is redacted under these

¹ The footnotes in this draft of the Interim Guidelines are for explanatory purposes only, to facilitate understanding and review of the draft, and are not expected to be included in the final version.

² This term is used to encompass non-parties (e.g., putative interveners and *amici curiae*) as well as parties. "Person" is insufficient because it might be construed not to apply to governmental entities.

³ This provision creates a record that protects against claims of improper alteration of documents.

guidelines, the filer must⁴ retain an unredacted copy and must furnish it to any party or to the court promptly upon request, but nothing herein requires furnishing of unredacted copies of documents redacted on other grounds. Where the filer, in preparing a document, omits digits from the any of the numbers listed in subsection (b)(1) above, the filer should so indicate, by the use of three “x” characters or by the phrase “ending in.”⁵

(c) Exemptions. Subsection (b) does not apply to a data element if any of the following apply:

(1) Inclusion of the data element in the document is specifically required by law, court rule, standing order, court-issued form, or order issued in the proceeding.

(2) The filer reasonably believes that including the complete data element in the document is necessary to the resolution of any issue before the court, including determining the identity of any person before the court. A filer should first consider whether it is sufficient to furnish the complete data element to the parties without filing it with the court. A filer should be particularly cautious before using a belief of necessity as the basis for including any of the following complete data elements:

(A) Social security number;

(B) Credit card or other financial account number, except when necessary to obtain or carry out a court order or to secure property to satisfy a judgment that has been or may be entered;⁶

(C) Driver’s license number, except in cases adjudicating an alleged motor vehicle infraction, or the validity of a motor vehicle insurance surcharge or of suspending, revoking, or conditioning a person’s right to operate a motor vehicle; or

(D) Passport number.

(3) The document including the data element is a transcript of the court proceeding, filed directly by a court reporter;⁷ or is the official record of an administrative adjudicatory

⁴ The word “must” is used, even though these are guidelines, because maintaining and making available an unredacted copy is a condition on the voluntary act of filing a redacted copy.

⁵ In the case of documents drafted for filing with the court (e.g., motions, memoranda, affidavits, as opposed to pre-existing exhibits), there is no need to require the filer to prepare a second version with complete personal identifiers; the filer could have left such information out of the filing even absent these guidelines. Nor is there a need to require the filer to supply such a complete version to other parties (or the court) upon request; that is more a matter of discovery law and, as subsection (g)(3) says, nothing in these guidelines limits the court’s power to order that such complete information be supplied.

⁶ This clause is meant to encompass restraining orders that will prevent the transfer of a bank account, supplementary process orders; liens, attachment, trustee process, and execution.

⁷ Transcripts are exempted to avoid undue burden on the court reporter.

proceeding or another court proceeding, filed by the agency or court.⁸ This exemption does not apply to a record appendix prepared by a party for purposes of an appeal; record appendices are governed by subsection (h)(2) of these guidelines.

(4) The document including the data element is produced directly to or in the court by a non-party in response to a subpoena, summons, or other court order;⁹ but any party that intends to offer such a document in evidence should, where feasible, make a copy thereof, redact the copy in accordance with these guidelines, and offer the redacted copy.

(d) Waiver. The filing of a document that contains one or more of the filer's own complete data elements does not by itself waive the applicability of these guidelines to the filing of such filer's complete data elements by any other filer. A filer may waive the applicability of these guidelines only by an express statement of waiver filed in writing or made in open court.

(e) Responsibility for Redaction or Omission of Data. The responsibility for redaction or omission of complete data elements from filings rests solely with the filer. The clerk should encourage compliance with these guidelines but need not review each filed document for compliance and should not reject for filing any non-compliant document.

(f) Applicability to Court Orders and Other Court-Issued Documents. In any order, memorandum of decision, or other document issued by the court that will be publicly accessible, the court should, through redaction, omission, or use of pseudonyms, avoid inclusion of a complete version of any data element covered by these guidelines, unless inclusion of the complete data element (1) is specifically required by law, court rule, standing order, or court-issued form; (2) is necessary to effectuate the purpose of the document being issued, or (3) is for other good cause.

(g) Relation to Other Confidentiality Provisions. These guidelines are not intended to:

⁸ Such records may be exempted because of the degree of burden on agencies and courts and because such records, often being lengthy, may be (1) less likely to be pored through by identity thieves in search of personal identifiers, and (2) less likely to be posted on the Internet, when the day comes that other pleadings are posted. Comments on whether to exempt records of administrative adjudicatory proceedings are particularly invited. The term "adjudicatory proceedings" is intended to refer to proceedings that are judicially reviewed primarily or exclusively on the agency record, under G.L. c. 30A or other law such as G.L. c. 249, § 4. The qualifier "adjudicatory" is desirable because otherwise, many more administrative processes might be characterized as "proceedings" and the records thereof, even if short, would be exempted from the redaction requirement.

⁹ This exemption is intended to cover documents produced by a non-party pursuant to Mass. R. Civ. P. 45(b), Mass. R. Crim. P. 17(a)(2), Superior Court Rule 13 and G.L. c. 233, § 79 (hospital records); and similar court rules or laws. It is intended to be consistent with the Dwyer protocol applicable to defendants' motions for Rule 17(a)(2) summonses. See Commonwealth v. Dwyer, 448 Mass. 122, 147-50 (2006). The exemption recognizes that requiring the non-party to redact, particularly where some or all of the records may never become available to the public, would be unduly burdensome.

(1) limit a filer's ability to move, under court rule, standing order, or law, to impound or otherwise keep confidential¹⁰ any document containing complete or partial personal identifying data elements;

(2) relieve any filer of the obligation to comply with any court rule,¹¹ order, or law governing impounded or confidential documents; or

(3) limit a court's authority to order that an unredacted version of a filed redacted document, or a complete version of a data element omitted from a filed document, be provided to any party or non-party, filed with the court, or both.

(h) Appellate Court Filings: Additional Guidelines. In addition to the above guidelines, filers should pay particular attention to the following considerations in all appellate court filings, including those in the Appellate Divisions of the Superior, District, and Boston Municipal Courts.

(1) Briefs, Memoranda of Law, Motions, and Similar Filings. In complying with subsections (b) and (c) above, the filer should exercise particular caution before including, based on a belief of necessity under subsection (c)(2), any complete data element in an appellate brief, memorandum of law, motion, and any similar filing or attachment thereto. Appellate briefs in particular, unless impounded, may be subject to wide electronic dissemination. If a filer includes any complete data element in an unimpounded brief in the Supreme Judicial Court or the Appeals Court, the filer should simultaneously file one additional, unbound copy of the brief, with such data element redacted or complete data omitted according to these guidelines, clearly marked "Limited Personal Identifying Data" on the cover and without including any addendum or appendix. The additional copy may, alternatively, be filed in portable document format (PDF) on CD-ROM.

(2) Record Appendices. A party¹² should make every effort to avoid unnecessarily designating for inclusion in the record appendix any document, particularly any portion of a transcript, that contains complete data elements covered by these guidelines. In addition:

(A) If a document to be included in the record appendix was redacted, or had complete versions of data elements omitted, when filed in or issued by the trial

¹⁰ The phrase "otherwise keep confidential" is included because of the various confidentiality labels now in use. For example, the Uniform Rules of Impoundment Procedure do not, in terms, apply in criminal cases. See also, e.g., G.L. c. 265, § 24C (requiring that court records containing rape victims' names be "withheld from the public"); cf. G.L. c. 6, § 178M (on judicial review of Sex Offender Registry Board decisions, records to be kept "confidential and . . . impounded").

¹¹ An example is Mass. R. App. P. 16(m), governing "references to impounded material."

¹² This paragraph refers to a "party" rather than a "filer," because non-parties to an appeal do not file record appendices, and because use of the term "party" is necessary in order to allocate responsibility for any redactions made pursuant to this paragraph.

court, the same version of the document should be included in the record appendix.

(B) If a document to be included in the record appendix was not redacted, or contained complete versions of data elements, when filed in or issued by the trial court, the party designating it for inclusion in the record appendix should redact it in accordance with subsection (b) above, unless the party reasonably believes that including the complete data element in the record appendix is necessary to the resolution of any issue before the appellate court.¹³ The party may mark any such redaction with a notation indicating that it was made by that party on a particular date or made pursuant to these guidelines.

(C) If a document to be included in the record appendix was filed in or issued by the trial court prior to the effective date of these guidelines, it is not subject to these guidelines when included in the record appendix, except that the party should make every effort to avoid unnecessarily designating for the record appendix any document that includes complete data elements covered by these guidelines.¹⁴

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¹³ This exception does not extend to instances where inclusion of the data element in the original trial court filing was required by law, court rule, standing order, or court-issued form or order, because it is assumed that such requirements do not apply, and would not serve any useful purpose if applied, to documents presented to the appellate court. If the complete data element is nevertheless reasonably believed to be necessary to the resolution of an issue on appeal, this exception authorizes its inclusion.

¹⁴ This sentence is merely a transitional provision.